APPENDIX A
LINOWES COMMISSION REPORT (SELECTED PAGES)

Commission of Fiscal Accountability
of the Nation's Energy Resources
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Washington, DC 20036
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January 21, 1982

The Honorable James G. Watt
Secretary of the Interior
Washington, D.C. 20240

Dear Mr. Secretary:

I am pleased to transmit to you the report of the Commission on Fiscal Accountability of the Nation's Energy Resources.

During the past six months, the Commission has investigated the serious allegations of massive irregularities in royalty payments due the Federal government, Indian tribes, and States; and the allegations of theft of oil from Federal and Indian lands. From the outset and throughout our deliberations, we have sought and obtained the active participation of all those having particular interests in our findings: State officials, Indian tribes, oil and gas companies, United States Geological Survey and others within the Department of the Interior, General Accounting Office, and committees of Congress, among others.

In its work, the Commission has maintained a position of independence and objectivity, giving full and balanced

consideration to all points of view. We believe our findings give a comprehensive and fair analysis of the conditions and relationships that now prevail within and among the institutions involved in royalty management. It is the unanimous judgment of the Commission that if the accompanying recommendations are adopted, a major step will have been taken to bring full and proper accountability to the management of Federal royalties.

Participation in the work of the Commission has been a challenging opportunity to serve our Nation, and to join in the President's attack on fraud, waste and inefficiency in the Federal government. We appreciate having this privilege.

Respectfully submitted,

David F. Linowes
Chairman

SUMMARY

Management of royalties for the Nation's energy resources has been a failure for more than 20 years. Because the Federal government has not adequately managed this multibillion dollar enterprise, the oil and gas industry is not paying all the royalties it rightly owes.

The government's royalty recordkeeping for Federal and Indian oil and gas leases is in disarray. For this reason, the exact amount of underpayment is unknown. The results of individual audits, which have often uncovered large underpayments, suggest that hundreds of millions of dollars due the U.S. Treasury, the States, and Indian tribes are going uncollected every year.

In addition, oil thefts are occurring on Federal and Indian leases. The extent of theft and the amount of royalty losses from theft are unknown, but it is well-documented that security at many Federal and Indian lease sites is lax and is an open invitation to theft.

The Nation can no longer afford mismanagement of royalties for its energy resources. The stakes are too high. With the rapid escalation of energy prices oil and gas royalties have risen from less than $500 million in 1971 to more than $4 billion in 1981.

The government's royalty management system needs a thorough overhaul. This report of the Commission on Fiscal Accountability of the Nation's Energy Resources details 60 specific recommendations (listed in Chapter Nine of the report) for revising and rebuilding the system. Underlying these recommendations are some fundamental conclusions

the Commission reached in the course of its intensive inquiry:

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23

undervaluation of natural gas was the largest factor in royalty underpayments. Because of the growing importance of natural gas as a source of royalty income, proper valuation of gas is especially important. In 1980, gas accounted for 56 percent of all energy mineral royalties on Federal and Indian lands. According to Interior Department projections, it will contribute approximately 75 percent by 1990.

Federal and Indian royalties on oil and gas are based on "fair market value," which cannot be less than the sales price and may be more. The complexities of establishing this value leave a wide latitude for differing interpretations. The USGS routinely accepts oil and gas companies' valuation of the product on which royalties are paid.

A major problem in setting fair market value for oil and gas is that large, vertically integrated companies in effect sell to themselves. These companies produce crude oil or natural gas, transport it, process it, and sell it, often to the final customer. The USGS rules require that integrated companies calculate royalties on crude oil or gas sold within the company on the basis of "market value," equal at least to what an independent buyer would pay.

Government price controls and longterm contracts for natural gas add complications. Oil price controls were lifted by President Reagan in January 1981, but natural gas price controls for interstate sales still exist and are scheduled to last until 1985. The controlled prices differ greatly according to the

date production began, with old prices far below current prices. Likewise, old prices are frozen into some
longterm gas contracts even where price controls do not apply. There are currently 27 different controlled prices for interstate sales of natural gas, a situation which allows many differences in interpretation of value

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64

PROBLEM: DETERMINING THE VALUE OF PRODUCTION

Most major audits conducted so far have found under-valuation of gas produced from Federal and Indian leases to be the biggest cause of royalty underpayments. Eleven major natural gas royalty audits were conducted by the Department of the Interior's Office of the Inspector General (formerly the Office of Audit and Investigation) from 1977 through 1981. Ten of the audits showed underpayments, of which nine were mainly due to undervaluation of the product.[11] (One audit showed an overpayment; the underpayments ranged from $684 to more than $10 million.) Royalties for natural gas already account for 56 percent of total Federal and Indian oil and gas royalties; by 1990, they are expected to be approximately 75 percent of the total. Thus, it is especially important to give attention to valuation of natural gas.

For valuation of oil and gas, as for reporting of production volumes, sales, and royalties, USGS usually accepts industry

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[11] In one of the nine cases the assessment of additional royalties was reversed on appeal by the Interior Department's Office of Hearing and Appeals. Three are currently on appeal.

date without verification. The Mineral Leasing Act of 1920 and the Indian leasing Act of 1927 specify that royalties shall be based on the "value of the production." The Outer Continental Shelf Act says that "fair market value" shall be received for the "lands leased and the rights conveyed."

Under these laws, USGS regulations base royalties on "estimated reasonable value," which "in the absence of good reason to the contrary," is the "value computed on the basis of the highest price...paid

or offered at the time of production in a fair and open market..." The fair market value, according to these rules, cannot be less than actual sales prices and may be more. In practice, however, the Geological Survey accepts the value of the product set by the industry—which is almost always the sales price—and relies on audits or lease analysis to correct any undervaluation.

Valuation problems occur especially with internal sales in vertically integrated companies, with longterm contracts, and with price-controlled products. Gas is especially subject to these problems since it is commonly sold by longterm contract, and some of it is price controlled. Other difficulties in valuation have to do with deductions allowed (from value of the product before the royalty is computed) for the costs of transporting oil or gas to a point of sale off the lease, and for the costs of processing natural gas (removing liquids).

Some examples of underpayment of royalties due to undervaluation are:

- A vertically integrated company using in its own refineries gas it had produced was allowed by USGS to use longterm contract prices, rather than higher current market prices, as a basis for royalties. An audit by the Interior Department's Office of Audit and Investigation showed underpayment for a 10-year period of $2.2 million. The underpayment amounted to 31 percent of royalties actually paid ($6.9 million).

- A review of offshore leases by the Office of the Audit and Investigation showed that offshore

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APPENDIX B
RELEVANT STATUTORY AND REGULATORY PROVISIONS

1. Federal Oil and Gas Royalty Management Act of 1982

30 U.S.C. § 1701. Congressional statement of findings and purposes

(a) Congress finds that--

(1) the Secretary of the Interior should enforce effectively and uniformly existing regulations under the mineral leasing laws providing for the inspection of production activities on lease sites on Federal and Indian lands;

(2) the system of accounting with respect to royalties and other payments due and owing on oil and gas produced from such lease sites is archaic and inadequate;

(3) it is essential that the Secretary initiate procedures to improve methods of accounting for such royalties and payments and to provide for routine inspection of activities related to the production of oil and gas on such lease sites; and

(4) the Secretary should aggressively carry out his trust responsibility in the administration of Indian oil and gas.

(b) It is the purpose of this chapter--

(1) to clarify, reaffirm, expand, and define the responsibilities and obligations of lessees, operators, and other persons

involved in transportation or sale of oil and gas from the Federal and Indian lands and the Outer Continental Shelf;

(2) to clarify, reaffirm, expand, and define the authorities and responsibilities of the Secretary of the Interior to implement and maintain a royalty management system for oil and gas leases on Federal lands, Indian lands, and the Outer Continental Shelf;

(3) to require the development of enforcement practices that ensure the prompt and proper collection and disbursement of oil and gas revenues owed to the United States and Indian lessors and those inuring to the benefit of States;

(4) to fulfill the trust responsibility of the United States for the administration of Indian oil and gas resources; and

(5) to effectively utilize the capabilities of the States and Indian tribes in developing and maintaining an efficient and effective Federal royalty management system.

(Pub.L. 97-451, § 2, Jan. 12, 1983, 96 Stat. 2448.)

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INDIAN LANDS

Pub.L. 104-185, § 9, Aug. 13, 1996, 110 Stat. 1717, provided that: "The amendments made by this Act [see Short Title of 1996 Amendments note set out under this section] shall not apply with respect to Indian lands, and the provisions of the Federal Oil and Gas Royalty Management Act of 1982 [this chapter] as in effect on the day before the date of enactment of

this Act [Aug. 13, 1996] shall continue to apply after such date with respect to Indian lands."

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2. 30 C.F.R. Part 218: Collection of Royalties, Rentals, Bonuses, And Other Monies Due The Federal Government

§ 218.50 Timing of Payment

(a) Royalty payments are due at the end of the month following the month during which the oil and gas is produced and sold except when the last day of the month falls on a weekend or holiday. In such cases, payments are due on the first business day of the succeeding month. Rental payments are due as specified by the lease terms.

(b) Payments made on a Bill for Collection (Form DI-104b) are due as specified by the Bill. Bills for Collection will be issued and payable as final collection actions.

(c) All payments to MMS are due as specified and are not deferred or suspended by reason of an appeal having been filed unless such deferral or suspension is approved in writing by an authorized MMS official.

§ 218.53 Recoupment of overpayments on Indian mineral leases

(a) Whenever an overpayment is made under an Indian oil and gas lease, a payor may recoup the overpayment through a recoupment on Form MMS-2014 against the current month's royalties or other revenues owed on the same lease. However, for any month a payor may not recoup more than 50 percent of the royalties or other revenues owed in that month under an individual allotted lease or more than 100 percent of the

royalties or other revenues owed in that month under a tribal lease.

(b) With written permission authorized by tribal statute or resolution, a payor may recoup an overpayment against royalties or other revenues owed in that month under other leases for which that tribe is the lessor. A copy of the tribe's written permission must be furnished to MMS pursuant to instructions for reporting recoupments in the MMS "Oil and Gas Payor Handbook." See 30 CFR 210.53. Recouping overpayments on one allotted lease is specifically prohibited.

(c) Overpayments subject to recoupment under this section include all payments made in excess of the required payment for royalty, rental, bonus, or other amounts owed as specified by statute, regulation, order, or terms of an Indian mineral lease.

(d) The MMS Director or his/her designee may order any payor to not recoup any amount for such reasonable period of time as may be necessary for MMS to review the nature and amount of any claimed overpayment.

§ 218.54 Late Payments

(a) An interest charge shall be assessed on unpaid and underpaid amounts from the date the amounts are due.

(b) The interest charge on late payments shall be at the underpayment rate established by the Internal Revenue Code, 26 U.S.C. 6621(a)(2) (Supp. 1987)

(c) Interest will be charged only on the amount of the payment not received. Interest will be charged only for the number of days the payment is late.

(d) A portion of the interest collected will be paid to a State where the State shares in mineral revenues from Federal leases.

(e) An overpayment on a lease or leases may be offset against an underpayment on a different lease or leases to determine a net underpayment on which interest is due pursuant to conditions specified in §218.42.

No. 05-669

FILED
JUN 13 2006
OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE

Supreme Court of the United States

BP AMERICA PRODUCTION COMPANY AND
ATLANTIC RICHFIELD COMPANY,
Petitioners,

v.

REJANE BURTON,
ACTING ASSISTANT SECRETARY OF THE INTERIOR
FOR LAND AND MINERALS MANAGEMENT, *et al.*,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

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PETITION FOR A WRIT OF CERTIORARI FILED – NOVEMBER 22, 2005
PETITION FOR A WRIT OF CERTIORARI GRANTED – APRIL 17, 2006

TABLE OF CONTENTS

	Page
Relevant Docket Entries from the United States Court of Appeals for the District of Columbia Circuit, Docket No. 04-5006	1
Relevant Docket Entries from the United States District Court for the District of Columbia, Case No. 1:00-cv-02933-WBB	5
Lease of Oil and Gas Lands under the Act of February 25, 1920, as Amended	10
Order of the Supreme Court of the United States, April 17, 2006	24

IN THE
UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

Docket No. 04-5006

AMOCO PRODUCTION COMPANY,
PLAINTIFF - APPELLANT,

V.

REBECCA W. WATSON, *et al.*,
DEFENDANTS - APPELLEES.

RELEVANT DOCKET ENTRIES

DATE	PROCEEDINGS
1/19/04	CIVIL-US CASE docketed. Notice of Appeal filed by Appellant Amoco Prodn Co. [798152-1] (sha) [04-5006]
	* * * * *
2/2/04	CLERK'S ORDER filed [800434] to consolidate cases
	* * * * *
3/3/04	INITIAL SUBMISSIONS filed by Appellants Amoco Prodn Co in 04-5006, and Vastar Resrc Inc., and Atl Richfield Co. in 04-5007 [807509]: docketing statement; certificate of counsel; statement of issues; the lower court decisions; deferred appendix notice (Deferred Appendix needed = y). [04-5006, 04-5007] (jth) [04-5006 04-5007]

DATE	PROCEEDINGS
3/3/04	INITIAL SUBMISSIONS filed by Federal Appellees DOI, et al., in 04-5006, 04-5007 [807518-1]: certificate of counsel. [04-5006, 04-5007] (jth) [04-5006 04-5007]
	* * * * *
6/15/04	CLERK'S ORDER filed [828510] to schedule oral argument
	[828510-1] before Judge Initials: DBS JGR SFW on 2/14/05 at 9:30 AM. [Entry Date: 6/15/04] [04-5006, 04-5007] (cwc) [04-5006 04-5007]
7/14/04	BRIEF filed by Appellants Amoco Production Co. in 04-5006, and Appellants Vastar Resources, Inc., Atlantic Richfield Company in 04-5007 [836821-1]. (Copies: 8). Certificate of mail service dated 7/14/04. [04-5006, 04-5007] (jth) [04-5006 04-5007]
7/28/04	BRIEF filed by Amicus Curiae for Appellant Burlington Resrc Inc in 04-5006 and 04-5007 [839218-1]. Copies: 7. Certificate of service date 7/28/04. [04-5006, 04-5007] (mam) [04-5006 4-5007]
	* * * * *
10/4/04	BRIEF filed by Appellee Gale A. Norton in 04-5006, Appellee DOI in 04-5006, Appellee Rebecca W. Watson in 04-5006, Appellee Gale A. Norton in 04-5007, Appellee DOI in 04-5007, Appellee Rebecca W. Watson in 04-5007 [853652-1]. Copies: 7. Certificate of service date 10/4/04. [04-5006, 04-5007] (lme) [04-5006 04-5007]

DATE	PROCEEDINGS
10/13/04	ERRATA TO INITIAL BRIEF FOR THE APPELLEES FILED ON 10/4/04 [858322-1] of (certificate of service dated 10/12/04, by mail) [853652-1] in 04-5006, 04-5007 filed by Appellees Gale A. Norton, DOI, Rebecca W. Watson in 04-5006, 04-5007. [04-5006, 04-5007] (lvs) [04-5006 04-5007]
	* * * * *
10/19/04	JOINT BRIEF w/ATTACHED ADDENDUM filed by Amicus Curiae for Appellees St CO, So Ute Indian Tribe, Assiniboine Sioux, Jicarilla Apache, St NM, CA St Controller in 04-5006, 04-5007 [858332-1]. 7 COPIES OF EACH. Certificate of service date 10/19/04, by mail). [04-5006, 04-5007] (lvs) [04-5006 04-5007]
11/19/04	JOINT REPLY BRIEF filed by Appellant Amoco Prodn Co in 04-5006, Appellants Vastar Resrc Inc, Atl Richfield Co in 04-5007 [864730-1]. Copies: 7. Certificate of service date 11/19/04, by mail. [04-5006, 04-5007] (lvs) [04-5006 04-5007]
12/3/04	JOINT APPENDIX [VOLUMES I & II] filed by Appellant Amoco Prodn Co in 04-5006, Appellants Vastar Resrc Inc, Atl Richfield Co in 04-5007 [864741-1]. Copies: 10. Certificate of service date 12/3/04. [04-5006, 04-5007] (lvs) [04-5006 04-5007]
12/6/04	SUPPLEMENTAL APPENDIX lodged by Appellants [864530-1]. Copies: 10. Certificate of service date 12/6/04. [04-5006, 04-5007] (lej) [04-5006 04-5007]
	* * * * *

DATE	PROCEEDINGS
12/9/04	FINAL BRIEF filed by Appellee Gale A. Norton, Appellee DOI, Appellee Rebecca W. Watson in 04-5006, 04-5007 [866784-1]. Copies: 15. Certificate of service date 12/9/04. [04-5006, 04-5007] (wmw) [04-5006 04-5007]
12/10/04	FINAL BRIEF filed by Appellant Amoco Prodn Co in 04-5006, Appellant Vastar Resrc Inc, Appellant Atl Richfied Co in 04-5007 [866767-1]. Copies: 15. Certificate of service date 12/10/04. [04-5006, 04-5007] (wmw) [04-5006 04-5007]
12/10/04	FINAL BRIEF filed by Amicus Curiae for Appellant Burlington Resrc Inc in 04-5006, 04-5007 [866808-1]. Copies: 15. Certificate of service date 12/10/04. [04-5006, 04-5007] (wmw) [04-5006 04-5007]

IN THE
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Case No. 1:00-cv-02933-WBB

AMOCO PRODUCTION COMPANY,

PLAINTIFF,

v.

SYLVIA V. BACA, *et al.*,

DEFENDANTS.

RELEVANT DOCKET ENTRIES

DATE	NO.	PROCEEDINGS
12/08/00	1	COMPLAINT filed by Plaintiff AMOCO PRODUCTION CO; Exhibits (3). (jeb) (Entered: 12/14/2000)
		* * * * *
03/06/01	11	ANSWER TO COMPLAINT [1-1] by federal defendants SYLVIA V. BACA, BRUCE BABBITT, and DOI. (ag) (Entered: 03/07/2001)
		* * * * *
08/20/01	15	MOTION filed by plaintiff AMOCO PRODUCTION CO for summary judgment (cas) (Entered: 08/29/2001)
		* * * * *

DATE	NO.	PROCEEDINGS
09/24/01	16	ADMINISTRATIVE RECORD by federal defendant SYLVIA V. BACA, federal defendant BRUCE BABBITT, federal defendant DOI; five volumes (nmr) (Entered: 09/25/2001)
		* * * * *
11/20/01	21	RESPONSE by plaintiff AMOCO PRODUCTION CO in opposition to Defendants' Consolidated Motion for Summary Judgment; Exhibits (7) (nmr) (Entered: 11/20/2001)
11/20/01	22	REPLY by plaintiff AMOCO PRODUCTION CO to response in opposition to motion for summary judgment [15-1] by AMOCO PRODUCTION CO; Exhibits (7) (nmr) (Entered: 11/20/2001)
		* * * * *
12/20/01	25	REPLY by federal defendant in support of federal defendant's Consolidated Motion for Summary Judgment. (nmr) (Entered: 12/21/2001)
		* * * * *
01/15/02	28	SURREPLY by plaintiff AMOCO PRODUCTION CO to motion for summary judgment [15-1] by AMOCO PRODUCTION CO (nmr) (Entered: 01/16/2002)
02/11/02	29	NOTICE OF SUPPLEMENTAL AUTHORITY by plaintiff AMOCO PRODUCTION CO (td) (Entered: 02/13/2002)
		* * * * *

DATE	NO.	PROCEEDINGS
02/21/02	32	MOTION (unopposed) filed by plaintiff AMOCO PRODUCTION CO for leave to file joint reply to defendant's response to plaintiffs' notice of supplemental authority; EXHIBIT (Joint Reply) (td) (Entered: 02/26/2002)
02/21/02	40	RESPONSE by federal defendant SYLVIA V. BACA, federal defendant BRUCE BABBITT, federal defendant DOI to notice of supplemental authority [29-1]. by AMOCO PRODUCTION CO (td) (Entered: 09/10/2002)
03/05/02	33	ORDER by Judge William B. Bryant: granting motion for leave to file joint reply to defendants' response to plaintiffs' notice of supplemental authority [32-1] by AMOCO PRODUCTION CO (N) (dam) (Entered: 03/05/2002)
03/13/02	34	MOTION filed by movant SOUTHERN UTE for leave to file brief of amicus curiae in support of defendants' motion for summary judgment; EXHIBIT (Amicus) (td) (Entered: 03/18/2002)
03/18/02	35	RESPONSE by plaintiff AMOCO PRODUCTION CO in opposition to motion for leave to file brief of amicus curiae in support of defendants' motion for summary judgment [34-1] by SOUTHERN UTE. (jf) (Entered: 03/20/2002)
03/21/02	36	REPLY (joint) by plaintiff AMOCO PRODUCTION CO to defendants' response to plaintiffs' notice of supplemental authority [29-1] by AMOCO PRODUCTION CO. (td) (Entered: 03/27/2002)

DATE	NO.	PROCEEDINGS
04/26/02	37	MOTION (unopposed) filed by plaintiff AMOCO PRODUCTION CO for leave to file joint reply to brief of amicus curiae; EXHIBIT (joint reply) (td) (Entered: 05/01/2002)
05/03/02	38	ORDER by Judge William B. Bryant; granting motion for leave to file joint reply to brief of amicus curiae [37-1] by AMOCO PRODUCTION CO (N) (dam) (Entered: 05/03/2002)
05/03/02	39	REPLY by plaintiff AMOCO PRODUCTION CO to amicus curiae brief of Southern Ute Indian Tribe. (td) (Entered: 09/10/2002)
11/17/03	41	ORDER denying [15] Motion for Summary Judgment. Signed by Judge William B. Bryant on 11/14/03. (lcwbbl,) (Entered: 11/17/2003)
11/17/03	42	MEMORANDUM for the reasons set forth herein, in an accompanying Order, the Court will deny the Plaintiffs' Motions for Summary Judgment and grant the Defendants' Motion for Summary Judgment. Signed by Judge William B. Bryant on 11/14/03. (lcwbbl,) (Entered: 11/17/2003)
01/07/04	43	NOTICE OF APPEAL as to 41 Order on Motion for Summary Judgment, 42 Memorandum & Opinion, by AMOCO PRODUCTION COMPANY. Filing fee $ 255, receipt number 120308. (cp,) (Entered: 01/08/2004)

DATE	NO.	PROCEEDINGS
01/08/04		Transmission of Notice of Appeal and Docket Sheet to US Court of Appeals re 43 Notice of Appeal (cp,) (Entered: 01/08/2004)
1/21/04	44	USCA case number 04-5006 for 43 Notice of Appeal filed by AMOCO PRODUCTION CO. (cp,) (Entered: 01/23/2004)
09/14/05	45	USCA JUDGMENT (certified copy) as to 43 Notice of Appeal filed by AMOCO PRODUCTION CO; It is hereby ordered and adjudged that the judgment of the District Court appealed from in these causes is hereby affirmed, in accordance with the opinion of the court; USCA#04-5006 (jsc) (Entered: 09/14/2005)

[unintelligible] UNITED STATES Office Santa Fe
DEPARTMENT OF THE INTERIOR Serial 079012
BUREAU OF LAND MANAGEMENT

[UNINTELLIGIBLE]

NONCOMPETITIVE
LEASE OF OIL AND GAS LANDS
UNDER THE ACT OF
FEBRUARY 25, 1920, AS AMENDED

THIS INDENTURE OF LEASE, entered into, in triplicate, as of the _____ day of _____ by and between the UNITED STATES OF AMERICA, through the Bureau of Land Management, party of the first part, and

Daniel A. Macpherson, Jr.,
1113 West Lead,
Albuquerque, New Mexico,

party of the second part, hereinafter called the lessee, under, pursuant, and subject to the terms and provisions of the act of February 25, 1920, 41 Stat. 437, as amended, hereinafter referred to as the act, and to all reasonable regulations of the Secretary of the Interior now or hereafter in force when not inconsistent with any express and specific provisions herein, which are made a part hereof, WITNESSETH:

SECTION 1. Rights of Lessee.—That the lessor, in consideration of rents and royalties to be paid, and the conditions and covenants to be observed as herein set forth, does hereby grant and lease to the lessee the exclusive right and privilege to drill for, mine, extract, remove, and dispose of all the oil and gas deposits except helium gas in or under the following-described tracts of land situated in ~~the field~~:

T. 30 M., B. 6 W., M.M.P.M., New Mexico,

Sec. 4, All;
Sec. 9, All;